IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5653 OF 2005

Shri Sunday Narayan Kargutkar ..Petitioner

Vs.

1. Maharashtra State Road Transport Corporation and anr. ..Respondents

Mrs. N.S. Moily for petitioner.
Mr. C.M. Lokesh i/by M/s. G.S. Hegde and Associates for respondent no.1.
Mr. S.K. Chinchalikar, AGP for respondent no.2.

CORAM: B.H. MARLAPALLE, J.

Date : December 14, 2007.

P.C.:

1. Heard the learned counsel for the petitioner who was working with the respondent-Corporation as a Bus Conductor. He came to be dismissed by an order dated 16/12/1993 on the basis of the enquiry conducted against him for the acts of misconduct as stated in charge-sheet dated 10/9/1991. He challenged the said order of dismissal in Complaint (ULP) No. 274 of 1993 filed under Section 28(1) read with Item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions &

Prevention of Unfair Labour Practices Act, 1971 (for short the Act). The complaint was opposed by the Corporation and after considering the rival contentions as well as the evidence, the learned Judge of the Labour Court was pleased to dismiss the complaint as per his Judgment and Order dated 1/8/2002. The petitioner then approached the Industrial Court at Kolhapur by filing Revision Application (ULP) No. 120 of 2002, which came to be dismissed by the learned Member vide his Judgment and Order dated 22/6/2004 and hence this petition.

2. The learned Judge of the Labour Court held that the incident was dated 4/8/1991 when the petitioner was manning the Corporation Bus on Rajapur-Vilaye road, the flying squad along with the police stopped the Bus and when they entered the Bus they found cans of illicit liquor. The Muddemal was seized, panchanams were drawn and the petitioner was charge-sheeted on 4/8/1991. The Labour Court held that the enquiry was conducted in keeping with the principles of natural justice and the findings recorded by the Enquiry Officer holding the petitioner guilty of allowing the illicit liquor trafficking in

his Bus were duly proved and having regards to the seriousness of the charge, the punishment was found to be just and proper. The Industrial Court under its revisionary powers had concurred with the findings of the Labour Court as well as on the quantum of punishment.

3. The learned counsel for the petitioner submitted that simultaneously an FIR was lodged regarding the incident of 4/8/1991 and the petitioner along with other six accused faced trial in Summary Case No. 62 of 1992 for the offences punishable under Sections 66(1)(b) and 65(a), 81 and 83 of the Bombay Prohibition Act. The learned JMFC at Rajapur was pleased to dismiss the said complaint and accused nos.2 to 8 were acquitted as per his Judgment and Order dated 17/11/1994. The learned counsel for the petitioner, therefore, submitted that when the petitioner has been given a clean acquittal and the learned JMFC held that there was no evidence to show that the petitioner was in possession of the illicit liquor while on duty on 4/8/1991, the findings recorded by the Labour Court and Industrial Court are patently erroneous. These submissions are fallacious

to say the least. It is required to be noted that before the learned JMFC the prosecution had examined in all three witnesses i.e. PW 1 Mahadev Govind Tawade, panch witness, PW 2 Vishwanath Nalawade and PW 3 Dilip Pawar. PWs 2 and 3 clearly stated that they had with other staff gone to check the ST Bus at village Shede, at about 8 a.m. the Bus No.MTO-8497 came and it was stopped by Police Head Constable Gurao and the raiding party had told their purpose to stop the ST Bus. Two panch witnesses were called who had found in the ST Bus six cans containing illicit liquor. When the raiding party enquired about the ownership of the cans, the petitioner could not say anything. Muddemal was seized and panchanama was prepared by the Police Inspector Sawant. The learned JMFC recorded the acquittal mainly on the ground that the accused were not found in possession of the muddemal and C.A. report was not on record. It was nobody's case that the petitioner was found in possession of the illicit liquor cans. The charge against him was that he connived with others in allowing trafficking of illicit liquor and this charge was duly proved on the basis of the enquiry officer's findings.

4. Hence, there is no case made out to cause interference in the concurrent findings recorded by both the courts below under the supervisory powers under Article 227 of the Constitution of India. The petition is rejected summarily.

(B.H. Marlapalle,J.)